

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JANE DOE,

Plaintiff,

vs.

ROBERTS WESLEYAN COLLEGE,

Defendant.

CIVIL ACTION NO.

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Defendant, Roberts Wesleyan College (hereinafter “Defendant”), by and through its attorneys, Jackson Lewis P.C., respectfully says:

1. Defendant files this Notice of Removal pursuant to 28 U.S.C. §1331, 1441 and 1446 to remove to this Court a certain civil action that Plaintiff, Jane Doe, commenced in New York State Supreme Court, County of Monroe, entitled, *Jane Doe v. Roberts Wesleyan College*, Index No. E202206830 (hereinafter “State Court Action”). The State Court Action is presently pending in that court.

2. Pursuant to Local Rule 81(a)(3)(A) of this Court, annexed hereto as **Exhibit A** is an index identifying all documents filed in the State Court Action. Specifically, Exhibit A is a printout from the state court’s electronic case docket (it is an e-filed case), listing all documents filed in that case as of October 12, 2022. There have been no other documents served in the State Court Action.

3. Pursuant to Local Rule 81(a)(3)(B) of this Court, all documents filed/served in the State Court Action to date are annexed hereto as the following Exhibits:

Exhibit B – Plaintiff’s Summons, filed in state court on August 25, 2022;

Exhibit C – Plaintiff’s Request for Judicial Intervention, filed in state court on August 25, 2022;

Exhibit D – Plaintiff’s Second Amended Complaint, filed in state court on August 29, 2022 (initial Complaint was filed on August 25, 2022); and

Exhibit E – Plaintiff’s Affidavit of Service, filed in state court on September 19, 2022.

4. Plaintiff commenced the State Court Action by filing the Summons and Complaint on August 25, 2022 (summons only attached as Exhibit B).

5. Plaintiff electronically filed the Second Amended Complaint in the State Court Action on August 29, 2022 (Exhibit D).

6. Defendant was served with the Summons and Second Amended Complaint on September 13, 2022. (Exhibit E).

7. This Notice of Removal is being timely filed within the provisions of 28 U.S.C. § 1446. Defendant has effected removal within thirty (30) days of the service of the Complaint from which it could first be ascertained that this action is removable. *See* 28 U.S.C. § 1446(b).

8. No proceedings have taken place in the State Court Action. Defendant has not served any answer or responsive pleading in connection with the State Court Action. Defendant has not made any appearance or argument before the Supreme Court of the State of New York, County of Monroe in connection with the State Court Action.

9. Plaintiff’s Second Amended Complaint in the State Court Action alleges that she is filing this action based, in part, on purported violations of the Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, et seq., (“Title IX”) and its implementing regulations at 34 C.F.R. § 106, et seq.

10. Accordingly, the State Court Action is being removed to this Court on the ground that original jurisdiction over Plaintiff's claims exists pursuant to 28 U.S.C. § 1331 by virtue of its federal question jurisdiction arising out of Plaintiff's claim under the Title IX.

11. Plaintiff's Second Amended Complaint in the State Court Action further alleges claims of sexual harassment in violation of the New York State Human Rights Law ("NYSHRL"); breach of contract; breach of covenant of good faith and fair dealing; negligent hiring and supervision; intentional infliction of emotional distress; estoppel and reliance.

12. Plaintiff's state law claims form part of the same case or controversy as Plaintiff's Title IX claim. *See* U.S.C. § 1367. Accordingly, this Court has pendent jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367 by virtue of their purported relatedness to Plaintiff's Title IX claim, over which this Court has original jurisdiction, and 28 U.S.C. § 1441(c).

13. Defendant is the sole defendant in the State Court Action and, therefore, no consent for removal is required from any other defendant.

14. Upon filing of this Notice of Removal, Defendant shall give prompt written notice thereof to J. Morgan Levy, Esq., J. MORGAN LEVY FIRM, PLLC, and shall file a copy of said Notice of Removal with the Clerk, Supreme Court of the State of New York, County of Monroe. Notice shall be given in two ways: (i) through electronic filing of the copy of this Notice of Removal in the State Court Action, inasmuch as Ms. Levy is an e-filing participant in that case; and (ii) by transmitting a courtesy hard copy of the Notice of Removal to Ms. Levy. We will file separate affidavits of service in this Court with regard to both means of delivery.

15. By filing this notice, Defendant does not waive any rights or defenses which may be available to it, on the merits or procedurally.

WHEREFORE, Defendant, Roberts Wesleyan College, removes the above-captioned action now pending against it in the Supreme Court of the State of New York, County of Monroe, to the United States District Court for the Western District of New York, wherein it shall proceed as an action originally commenced therein.

Dated: October 12, 2022

Respectfully submitted,

ATTORNEYS FOR DEFENDANT

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